

1 SENATE BILL NO. 240

2 INTRODUCED BY E. STONINGTON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING COMPENSATION FOR
5 DAMAGES SUSTAINED BY THE SURFACE OWNER WHEN OIL OR GAS OPERATIONS ARE CONDUCTED;
6 CLARIFYING THE PURPOSE OF THE LAWS; ELIMINATING THE DEFINITION OF "OIL AND GAS
7 DEVELOPER OR OPERATOR"; DEFINING "OPERATOR"; CHANGING THE DEFINITION OF "OIL AND GAS
8 OPERATIONS" TO "OIL OR GAS OPERATIONS"; CONFORMING SECTIONS TO THE REVISED
9 DEFINITIONS; REVISING THE REQUIREMENTS GOVERNING NOTICE OF OIL AND GAS OPERATIONS TO
10 REQUIRE THAT THE NOTICE INCLUDE AN OFFER TO ENTER INTO GOOD FAITH NEGOTIATIONS WITH
11 THE SURFACE OWNER REGARDING MITIGATION OF AND COMPENSATION FOR DAMAGES AND TO
12 REQUIRE THAT THE NOTICE BE GIVEN NO FEWER THAN 45 DAYS BEFORE ENTRY ON THE SURFACE
13 OWNER'S LAND TO BEGIN OIL OR GAS OPERATIONS; REQUIRING THE OPERATOR TO ENTER INTO
14 GOOD FAITH NEGOTIATIONS WITH THE SURFACE OWNER REGARDING MITIGATION OF AND
15 COMPENSATION FOR DAMAGES BEFORE ENTERING THE SITE TO BEGIN OIL OR GAS OPERATIONS;
16 SPECIFYING ITEMS THAT MUST BE ADDRESSED IN THE NEGOTIATIONS; PROVIDING THAT THE
17 OPERATOR IS REQUIRED TO COMPENSATE THE SURFACE OWNER FOR LOST USE OF AND ACCESS
18 TO THE SURFACE OWNER'S LAND; PROHIBITING ENTRY ON THE SURFACE OWNER'S LAND UNTIL
19 NOTICE HAS BEEN PROVIDED AND A WRITTEN AGREEMENT HAS BEEN REACHED REGARDING
20 MITIGATION OF AND COMPENSATION FOR DAMAGES OR THE OPERATOR HAS PETITIONED THE
21 COURT TO APPOINT APPRAISERS TO DETERMINE COMPENSATION FOR DAMAGES AND PROVIDING
22 TREBLE DAMAGES FOR A VIOLATION OF THIS PROHIBITION; PROVIDING FOR DETERMINATION OF
23 DAMAGES BY A DISTRICT COURT UPON PETITION; PROVIDING FOR APPEAL OF THE COURT'S
24 JUDGMENT; AMENDING SECTIONS 82-10-501, 82-10-502, 82-10-503, 82-10-504, 82-10-505, AND 82-11-122,
25 MCA; AND REPEALING SECTIONS 82-10-506, 82-10-507, AND 82-10-508, MCA."

26

27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

28

29 **Section 1.** Section 82-10-501, MCA, is amended to read:30 **"82-10-501. Purpose -- legislative findings.** (1) The purpose of this part is to:

1 (a) provide for the protection of surface owners of land underlaid with oil and gas reserves while
2 allowing for the necessary development of those reserves;

3 (b) encourage accommodation of potentially conflicting interests by agreement; and

4 (c) provide expeditious procedures for quantifying the obligations of owners of severed oil and gas
5 estates when agreement cannot be reached.

6 (2) To carry out the purpose described in subsection (1), the legislature finds that:

7 (a) it is necessary to protect the economic well-being of ~~individuals engaged in agricultural production~~
8 surface owners;

9 (b) exploration for and development of oil and gas reserves in this state, while necessary, interferes with
10 the use, ~~agricultural or otherwise,~~ of the surface of certain land; and

11 (c) owners of the surface estate should be justly compensated for use of their property and interference
12 with the use of their property due to oil ~~and~~ or gas development.

13 (3) The legislature further finds that the purpose of this part can be pursued without impairment of any
14 constitutionally protected rights of owners of severed oil and gas estates through the exercise of the state's
15 police power by:

16 (a) requiring accommodation of uses; and

17 (b) providing for compensation for damages to the surface estate.

18 (4) The legislature further finds that this part does not prevent:

19 (a) the owner of a severed oil and gas estate from engaging in the development of oil or gas; or

20 (b) the issuance of a permit required under law for oil or gas development."

21

22 **Section 2.** Section 82-10-502, MCA, is amended to read:

23 **"82-10-502. Definitions.** As used in this part, the following definitions apply:

24 (1) "Agricultural production" means the production of any growing grass, crops, or trees attached to the
25 surface of the land or farm animals with commercial value.

26 (2) ~~"Oil and gas developer or operator" means the person who acquires the oil and gas lease for the~~
27 ~~purpose of extracting oil and gas;~~

28 (3)(2) "Oil and gas estate" means an estate in or ownership of all or part of the oil and gas underlying
29 a specified tract of land.

30 (4)(3) "Oil ~~and~~ or gas operations" means the exploration for or drilling of an oil ~~and~~ or gas well that

1 requires entry upon the surface estate ~~and is begun subsequent to June 1, 1981~~, and the production operations
2 directly related to the exploration or drilling.

3 (4) "Operator" means the owner or lessee of the oil and gas estate who intends to conduct oil or gas
4 operations.

5 (5) "Surface owner" means the person who holds record title to or has a purchaser's interest in the
6 surface of the land."

7

8 **Section 3.** Section 82-10-503, MCA, is amended to read:

9 **"82-10-503. Notice of drilling oil or gas operations.** (1) In addition to the requirements for geophysical
10 exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the
11 surface owner and any purchaser under contract for deed written notice of the drilling oil or gas operations that
12 he the operator plans to undertake. This

13 (2) The notice shall must be given to the record surface owner and any purchaser under contract for
14 deed at their addresses as shown by the records of the county clerk and recorder at the time the notice is given.
15 This

16 (3) The notice shall must:

17 (a) sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the
18 effect of drilling oil or gas operations on the surface owner's use of the property; and

19 (b) include an offer to enter into good faith negotiations with the surface owner regarding mitigation of
20 and compensation for damages, as provided in 82-10-504.

21 (4) The notice shall must be given no more than 90 days and no fewer than 40 45 days before
22 commencement of any activity on the land surface entering the surface owner's land to conduct oil or gas
23 operations."

24

25 **Section 4.** Section 82-10-504, MCA, is amended to read:

26 **"82-10-504. Surface damage and disruption payments mitigation and compensation -- negotiation**
27 **-- penalty for late payment.** (1) After notice of oil or gas operations has been provided under 82-10-503 and
28 before entering the surface owner's land to conduct oil or gas operations, the operator shall enter into good faith
29 negotiations with the surface owner to reach a written agreement regarding the following:

30 (a) placement of roads to be constructed by the operator;

1 (b) points of entry upon the surface for oil or gas operations;

2 (c) construction and placement of pits used for oil or gas operations;

3 (d) use and impoundment of water on the surface of the land;

4 (e) removal of plants;

5 (f) surface water drainage changes caused by oil or gas operations;

6 (g) actions to be taken by the operator to mitigate damages, including reclamation of the land and
7 actions to control weeds, dust, and traffic; and

8 (h) compensation for damages as provided in subsection (2).

9 (2) (a) The oil and gas developer or operator shall pay the surface owner a sum of money or other
10 compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production
11 and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements
12 caused by ~~drilling oil or gas~~ operations.

13 (b) The amount of damages may be determined by any formula mutually agreeable between the surface
14 owner and the ~~oil and gas developer or operator~~. When determining damages, consideration ~~shall~~ must be given
15 to the period of time during which the loss occurs.

16 (c) The surface owner may elect to receive annual damage payments over a period of time, except that
17 the surface owner ~~shall~~ must be compensated by a single sum payment for harm caused by exploration only.

18 (d) ~~The payments contemplated by this subsection (1) may only cover land directly affected by drilling~~
19 ~~operations and production. Payments under this subsection (1) section are intended to compensate the surface~~
20 ~~owner for damage and disruption; no. A person may not reserve or assign that compensation apart from the~~
21 ~~surface estate except to a tenant of the surface estate.~~

22 (3) If the surface owner and the operator do not reach a written agreement regarding mitigation of and
23 compensation for damages under this section, the operator may petition the court to determine damages as
24 provided in [section 7].

25 ~~(2)(4) An oil and gas developer or operator who fails to timely pay an installment under any annual~~
26 ~~make a payment under a damage agreement negotiated with a surface owner or as provided in a compensation~~
27 ~~award determined by the court pursuant to [section 7] is liable for payment to the surface owner of twice the~~
28 ~~unpaid amount of the unpaid installment if the installment payment is not paid within 60 days of receipt of notice~~
29 ~~of failure to pay from the surface owner."~~

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1 **Section 5.** Section 82-10-505, MCA, is amended to read:

2 "**82-10-505. Liability for damages to property.** The ~~oil and gas developer or operator~~ is responsible
3 for all damages to property, real or personal, resulting from the lack of ordinary care by the ~~oil and gas developer~~
4 ~~or operator~~. The ~~oil and gas developer or operator~~ is responsible for damages to property, real or personal,
5 caused by drilling oil or gas operations and production."

6
7 NEW SECTION. **Section 6. Entry for oil or gas operations.** The operator may enter on the surface
8 owner's land to begin oil or gas operations in substantial compliance with the permit issued by the board of oil
9 and gas conservation under Title 82, chapter 11, only after the operator has given notice of oil or gas operations
10 as provided in 82-10-503 and after:

11 (1) the surface owner and the operator reach a written agreement regarding mitigation of and
12 compensation for damages under 82-10-504; or

13 (2) the operator has petitioned the court for appointment of appraisers, as provided in [section 7]. The
14 operator may not conduct any activity that will cause a material change in the surface owner's agricultural
15 production and income, land value, use of and access to the surface owner's land, or value of improvements
16 before the appraisers have filed a written report pursuant to [section 7].

17
18 NEW SECTION. **Section 7. Determination of damages by court – petition.** (1) If the surface owner
19 and the operator do not reach a written agreement regarding mitigation of and compensation for damages under
20 82-10-504, the operator may petition the district court for the county in which the site is located for appointment
21 of appraisers to make recommendations to the parties and to the court regarding compensation for damages
22 that are expected to be caused by the operator's proposed oil or gas operations.

23 (2) Within 10 days after filing a petition for appointment of appraisers, the operator shall serve the
24 surface owner with notice of the petition as provided in the Montana Rules of Civil Procedure. If the address of
25 the surface owner cannot be determined, the operator may serve notice by publication as provided in the
26 Montana Rules of Civil Procedure.

27 (3) If a surface owner who cannot be located does not respond within 20 days after notice by
28 publication, the operator may elect to terminate the appraisal proceeding and has the continuing right of entry
29 to conduct oil or gas operations in substantial compliance with the permit issued by the board of oil and gas
30 conservation under Title 82, chapter 11.

- 1 (4) The court shall appoint appraisers who:
- 2 (a) must be general real estate appraisers, certified under Title 37, chapter 54, part 3;
- 3 (b) may not be a current or former director, officer, partner, employee, consultant, attorney, accountant,
- 4 or relative of the operator or surface owner; and
- 5 (c) must be selected as follows:
- 6 (i) the operator shall select one appraiser;
- 7 (ii) the surface owner shall select one appraiser; and
- 8 (iii) the two selected appraisers shall select a third appraiser.
- 9 (5) Unless the court allows additional time for good cause shown, including suspension or abandonment
- 10 of the appraisal process as set forth in subsection (12), the three appraisers must be selected within 20 days
- 11 after service of the notice of the petition to appoint appraisers. If either of the parties fails to appoint an appraiser
- 12 or if the two appraisers cannot agree on the selection of the third appraiser within the required time period, the
- 13 court shall select the remaining required appraisers upon application of either party.
- 14 (6) (a) The appraisers shall inspect the site to determine the damages that are expected to be caused
- 15 by the operator's proposed oil or gas operations. To the extent that the damages include the diminution of the
- 16 site's property value, the valuation must be calculated in accordance with the fair market value of the site.
- 17 (b) The appraisers shall file a signed, written report with the clerk of the court within 30 days after the
- 18 date of their appointment.
- 19 (c) The report filed by the appraisers must:
- 20 (i) describe the surface area, boundaries, value of the site, and amount of damages that are expected
- 21 to be caused by the operator's proposed oil or gas operations;
- 22 (ii) recommend the amount of money, if any, to be paid by the operator to the surface owner in
- 23 compensation for damages expected to be sustained by the surface owner for loss of agricultural production and
- 24 income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements
- 25 caused by oil or gas operations; and
- 26 (iii) specify the manner in which the operator shall pay the money.
- 27 (7) The court shall determine the appraisers' compensation. The court shall assess the appraisers' costs
- 28 against the parties in amounts the court finds equitable.
- 29 (8) Within 10 days after the appraisers file the report required pursuant to subsection (6), the clerk of
- 30 the court shall forward to each party a copy of the report and a dated notice stating the time limits for filing an

1 exception or a demand for jury trial.

2 (9) Either party may file written exceptions within 30 days after filing of the report required pursuant to
3 subsection (6). Upon the filing of written exceptions, the court shall hold a hearing to review the report. After the
4 hearing, the court shall enter an appropriate order confirming, rejecting, or modifying the report or ordering a new
5 appraisal for good cause shown. If the court orders a new appraisal at the request of the operator, the operator
6 has continuing right of entry.

7 (10) Either party may, within 60 days after the filing of the appraisers' report, file with the clerk of the
8 court a written demand for a trial by jury, as provided in the Montana Rules of Civil Procedure. If the party
9 demanding the trial does not recover a verdict more favorable to the party than the recommendation of the
10 appraisers, all court costs and reasonable attorney fees must be assessed against the party demanding the trial.

11 (11) If the operator does not file an exception or demand a trial by jury under this section or file an
12 appeal under [section 8] and the surface owner cannot be located, the court shall certify the compensation award
13 recommended by the appraisers as final and binding.

14 (12) The appraisal process may be abandoned or suspended at any time prior to the filing of the
15 appraisers' report through mutual written agreement of the surface owner and the operator.

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17 **NEW SECTION. Section 8. Appeal.** An aggrieved party may appeal the final judgment of the court.
18 The appeal may not delay oil or gas operations.

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20 **NEW SECTION. Section 9. Treble damages.** (1) The court may award treble damages to a surface
21 owner upon a showing, by a preponderance of the evidence, that the operator intentionally or negligently began
22 oil or gas operations on the surface owner's land before:

- 23 (a) giving notice of oil or gas operations as provided in 82-10-503;
24 (b) securing the agreement of the surface owner; or
25 (c) petitioning the court for appointment of appraisers.

26 (2) (a) Except as provided in subsection (2)(b), collection of damages under this part does not preclude
27 the surface owner from the collection of any additional damages caused by the operator at a subsequent date.

28 (b) If the operator compensated the surface owner for the full market value of a site under this part, no
29 additional compensation may be awarded for subsequent damage to the site.

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